



January 14, 2005

SENATE BILL No. 98

DIGEST OF SB 98 (Updated January 11, 2005 4:34 pm - DI 106)

Citations Affected: IC 35-38.

Synopsis: Probation revocation. Permits a judge to order execution of all or part of a probationer's suspended sentence if the probationer violates a condition of probation. (Current law only permits the court to order execution of all of the probationer's suspended sentence.) (The introduced version of this bill was approved by the sentencing policy study committee.)

Effective: July 1, 2005.

Long, Howard

January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 13, 2005, reported favorably — Do Pass.

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SB 98—LS 6236/DI 106+



January 14, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 98

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-2-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The court may
3 revoke a person's probation if:

4 (1) the person has violated a condition of probation during the
5 probationary period; and

6 (2) the petition to revoke probation is filed during the
7 probationary period or before the earlier of the following:

8 (A) One (1) year after the termination of probation.

9 (B) Forty-five (45) days after the state receives notice of the
10 violation.

11 (b) When a petition is filed charging a violation of a condition of
12 probation, the court may:

13 (1) order a summons to be issued to the person to appear; or

14 (2) order a warrant for the person's arrest if there is a risk of the
15 person's fleeing the jurisdiction or causing harm to others.

16 (c) The issuance of a summons or warrant tolls the period of
17 probation until the final determination of the charge.

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(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

(f) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of **all or part of** the sentence that was suspended at the time of initial sentencing.

(h) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:

- (1) order a sanction as set forth in subsection (g); and
- (2) provide credit for time served as set forth under IC 35-38-2.5-5.

(i) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:

- (1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
- (2) order execution of **all or part of** the sentence that was suspended at the time of the initial sentencing.

(j) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:

- (1) order a sanction as set forth in subsection (i); and

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- 1 (2) provide credit for time served as set forth under
2 IC 35-38-2.5-5.
3 (k) A judgment revoking probation is a final appealable order.
4 (l) Failure to pay fines or costs required as a condition of probation
5 may not be the sole basis for commitment to the department of
6 correction.
7 (m) Failure to pay fees or costs assessed against a person under
8 IC 33-40-3-6, IC 33-37-2-3(c), or IC 35-33-7-6 is not grounds for
9 revocation of probation.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 98, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 98 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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